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IN THE

Supreme Court of the United States

October Term, 1966

No. 837

MAYFLOWER CONGREGATIONAL CHURCH,
a Michigan corporation,

Petitioner,

against

HELEN JOAN BERKAW, GRACE PFAFF, FRANK C. SMITH and ROY L. STEPHENS, Jr.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

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December 7, 1966

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

Petitioner prays that a writ of certiorari issue to review a decision of the Supreme Court of the State of Michigan, entered in the above-entitled action on August 24, 1966.

Citation to Opinions Below

The Wayne County Circuit Court dismissed the bill of complaint without opinion, but its findings of fact and conclusions of law are found in its order and judgment dated April 13, 1964, which is unreported and which is printed in the separate Appendix hereto (1a-4a).* The

* References in parenthesis, unless otherwise indicated, refer to pages of the separate Appendix to the petition herein. References preceded by "Mich. Apx." refer to pages of "Appellants' Appendix in the Supreme Court of Michigan", pp. 1a-294a.

opinion of the Michigan Court of Appeals affirming the judgment of the Wayne County Circuit Court, printed in the Appendix (5a-13a), is reported in 1 Mich. App. 252, 135 N.W. 2d 553. The opinion of the Michigan Supreme Court reversing the decision of the Court of Appeals, printed in the Appendix (14a-46a), is reported in 378 Mich. 239, 144 N.W. 2d 455.

Jurisdiction

The decision of the Supreme Court of Michigan sought to be reviewed was dated and entered on August 24, 1966 and is printed in the Appendix (47a). On November 17, 1966 Mr. Justice Stewart signed an order extending petitioner's time to file a petition for writ of certiorari to and including December 7, 1966. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(3) since petitioner claims a right under the Constitution of the United States.

Question Presented

This controversy arises out of the union of the Congregational Christian Churches in the United States and the Evangelical and Reformed Church to form the United Church of Christ.

Petitioner Mayflower, by vote of its congregation duly taken in accordance with its charter and by-laws, has elected to become a part of the United Church.

Respondents, plaintiffs below, are individual members of the Mayflower Church who dissented from this determination. In the present action they seek to have all of the property of the Mayflower Church vested in them on the ground that the union effects a *departure* from Congregationalism, the essence of which is the autonomy of local churches.

In a previous representative action, in which the plaintiffs represented all Congregational Christian churches and their members, it has been held that the union involves (as the New York Court of Appeals expressed it) "no intrusion in or abridgment of traditional congregational polity and usage through fellowship of independent autonomous congregations, free of authoritative control." *Cadman Memorial Congregational Soc'y* v. *Kenyon*, 306 N. Y. 151, 161 (1953).*

In four subsequent actions brought in four different courts it has been held that the foregoing determination in the *Cadman* case was a binding adjudication entitled to full faith and credit and determinative of the departure issue.** One of those actions, like the *Cadman* action, was a representative class action in behalf of all Congregational Christian churches and their members. *First Congregational Church & Society of Burlington, et al.* v. *Evangelical & Reformed Church, et al.*, 305 F. 2d 724 (USCA 2d 1962) cert. den. 372 U. S. 918.***

In the present case, however, the Michigan Supreme Court rejected the authority of these decisions and refused to give the *Cadman* and *Burlington* judgments full faith and credit on the ground that they had not determined the departure issue.

The question presented is whether, in holding that the *Cadman* and *Burlington* judgments are not determinative of the issue raised in the present action, the Supreme Court of Michigan failed to comply with the mandate of Article IV, Section 1 of the United States Constitution.

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* The New York Court of Appeals' opinion in the *Cadman* case is printed in the Appendix (48a-64a).

** A tabular summary of all the cases involving this union is printed in the appendix (105a).

*** The opinion of the U. S. District Court in the *Burlington* case is reported in 198 F. Supp. 677 and is printed in the Appendix (65a-89a); the U. S. Court of Appeals opinion is printed in the Appendix (90a-99a).

Constitutional and Statutory Provisions Involved

The constitutional provisions and statutes involved in this case are United States Constitution, Article IV, Section 1, and Title 28 U. S. C., Section 1738:

U. S. Constitution, Article IV, Section. 1:

> "Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Title 28 U.S.C. Sec. 1738:

> "Sec. 1738. State and Territorial Statutes and Judicial Proceedings; full faith and credit
>
> "The acts of the legislature of any state, territory or possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such state, territory or possession thereto.
>
> "The records and judicial proceedings of any court of any such state, territory or possession, or copies thereof, shall be proved or admitted in other courts within the United States and its territories and possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> "Such acts, records and judicial proceedings, or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its territories and possessions as they have by law or usage in the courts of such state, territory or possession from which they are taken."

Statement of the Case

Petitioner, defendant below, is a Congregational Christian church located in Detroit, Michigan. Respondents, representing a minority of the membership of Petitioner, seek a declaratory judgment invalidating the action taken

by the Petitioner to become a part of the United Church of Christ on the ground that the union would be a departure from the faith and usages to which the church property has been dedicated (Mich. Apx. 9a). Respondents also seek to enjoin Petitioner's officers from implementing such action and to quiet title to the church property.

Since its organization in 1930, Petitioner has been affiliated with the Congregational denomination.* Petitioner's action to become a part of the United Church of Christ was taken on April 30, 1961, at which time a majority of its members voted in favor of a resolution that the Petitioner become a part of the United Church of Christ (Mich. Apx. 35a). The validity of the procedure by which the vote was taken is not contested in this action.

Petitioner moved to dismiss the bill of complaint on the ground that the matters sought to be adjudicated had already been determined against the Respondents in the *Cadman* and *Burlington* cases, that Respondents were barred from litigating such matters on principles of res judicata and that the Michigan courts were obliged to give full faith and credit to the judgments of the court of New York and of the United States court sitting in New York (107a-108a).

The Circuit Court of Wayne County granted the motion and dismissed the complaint on the ground that the plaintiffs in both the *Cadman* and *Burlington* actions represented a class of which the Respondents were members and that they asserted rights and interests in the subject matter of the litigation which included all the rights and interests asserted by the Respondents in this action (3a-4a).

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* The Congregational denomination has been known as the Congregational Christian denomination since its 1931 union with the Christian denomination.

The Michigan Court of Appeals affirmed the judgment of the Circuit Court of Wayne County on identical grounds (5a-13a).

The Supreme Court of Michigan reversed on the ground that the New York Court of Appeals did "not consider the departure question" and "it had no jurisdiction or power so to do because there were no property interests shown so as to confer jurisdiction to decide this ecclesiastical question" (35a); hence the adjudications by the New York Court of Appeals and United States Court in New York did not preclude respondents from litigating the issue raised in the present case (43a).

The church union and resulting litigation

In order to give this Court a complete understanding of the case, it is necessary to set forth briefly the history of the denominational union which produced the United Church of Christ and a description of the prior litigation connected therewith.

A. *The Union.* In the late 1940's, the General Council of the Congregational Christian Churches, an unincorporated association which is the national fellowship body of the Congregational Christian denomination, and the Evangelical and Reformed Church formulated a "Basis of Union" under which the two communions would unite without break in their respective historic continuities (Mich. Apx. 68a). It provided for a voluntary union of churches, associations and conferences which would not abridge the rights previously enjoyed by the churches (51a-52a). A General Synod of the United Church of Christ was to be formed and was to prepare a constitution for the United Church of Christ based on the principles set forth in the Basis of Union (Mich. Apx. 43a). That constitution was prepared and declared in force on July 4, 1961.

B. *The Cadman Case.* In April, 1949 an action was brought in the New York State courts by the Cadman Church, an unincorporated religious body conducting the services and religious activities of the congregation, and the Cadman Society, a religious corporation having custody and control of the temporalities and property of the congregation. The plaintiffs, as the Federal District Court noted in *Burlington,* sued as representatives of all Congregational Christian churches and their members (74a). The defendant was the General Council aforesaid, which is composed of both laity and clergy representing individual Congregational Christian churches, local associations, state conferences and other affiliated organizations (50a).

The *Cadman* plaintiffs challenged the authority of the General Council to consummate the proposed plan of union on behalf of itself and on behalf of any Congregational Christian church desiring to participate (52a). As stated by the New York Court of Appeals, the complaint in the Cadman action proceeded "upon the theory that the proposed United Church of Christ is and will be so alien and different in structure and polity that fundamental Congregational usage and practice will be wholly lost and destroyed" (53a).

In addition to their claimed right to a declaration that the General Council lacked the power to consummate the union, the plaintiffs sought declarations that any Congregational Christian church which united with the United Church of Christ would remove itself from the Congregational Christian fellowship and that churches which did not unite would remain "the Congregational Christian Churches" (52a; Mich. Apx. 85a).

After trial, the Supreme Court of New York directed judgment on the merits for plaintiffs. A judgment was thereafter entered containing various declarations and an injunction against the General Council (Mich. Apx. 233a-241a). On appeal, the Appellate Division, Second De-

partment, reversed the judgment of the trial court on the law and the facts and dismissed the complaint (Mich. Apx. 241a-242a).

The New York Court of Appeals affirmed the judgment of the Appellate Division, holding that "there will be no intrusion in or abridgment of traditional congregational polity and usage through fellowship of independent autonomous congregations, free of authoritative control" (52a), and that "the proposed union will in no way change the historical and traditional pattern of the individual Congregational Christian Churches" and that "under these circumstances no ecclesiastical question is presented" (54a).

The New York Court of Appeals further considered plaintiffs' claim of right to the funds of the General Council, its boards, agencies and instrumentalities and held that their voluntary contributions created no proprietary or beneficial interest in these funds and assets and that plaintiffs had made no showing that the funds were to be used for other than authorized charter purposes (58a-59a).

In conclusion, the Court stated:

> "On this record, the proof having established that the Basis of Union is voluntary and in no way interferes with Congregational faith or manner of worship, and the plaintiffs having failed to establish any direct or beneficial interest in and to the unrestricted funds of the General Council, its various boards, agencies and instrumentalities, and having failed to show that any such general funds are to be used for other than authorized charter purposes, the complaint was properly dismissed on the merits" (59a).

C. *The Burlington Action.* The *Burlington* action was commenced three and a half years after the dismissal of the complaint in the *Cadman* action. The plaintiffs were a number of Congregational Christian churches and their

members.* They sued both individually and representatively on behalf of all Congregational Christian churches and their members (Mich. Apx. 87a). The defendants were the General Council, the boards and agencies affiliated with the Congregational Christian denomination and the Evangelical and Reformed Church. The issues raised in the *Burlington* action were exactly the same as those raised in the *Cadman* action.

Defendants pleaded the defense of res judicata, citing the *Cadman* judgment (Mich. Apx 223a *et seq.*). Plaintiffs sought to avoid the force of that prior judgment by claims that they possessed interests in the funds of the Congregational Christian boards and agencies different from those asserted by the *Cadman* plaintiffs and that the union had proceeded along lines substantially deviating from the plan established in the Basis of Union.

The United States District Court for the Southern District of New York ordered a separate trial of the issues thus raised with respect to the defenses of res judicata and estoppel by judgment. At the conclusion of the trial, judgment was entered dismissing the complaint on the ground that the questions raised had been previously adjudicated against all of the plaintiffs individually and against each and every class represented by the plaintiffs by the final adjudication on the merits of the New York Court of Appeals in the *Cadman* action (Mich. Apx. 129a-131a). The court held that all Congregational Christian churches and members thereof were within the class represented by the *Cadman* plaintiffs (74a). Further, in response to plaintiffs' claim that the union as consummated had deviated from the Basis of Union, the court found, *inter alia*, that the constitution of the United Church, here challenged by the plaintiffs, was in conformity with the original plan of union (85a).

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* A Michigan church (Pontiac) and a member of a Michigan church were among the named plaintiffs (Mich. Apx. 88a-89a).

On appeal, the United States Court of Appeals, Second Circuit, affirmed the judgment of the District Court dismissing the complaint (90a-99a). This Court denied certiorari. 372 U. S. 918 (1963).

D. *Other Cases.* Following the *Burlington* case, actions were brought in Ohio, Wisconsin and Wyoming that were in all substantial respects identical to the present action. In each of those cases a minority of the members of a local Congregational Christian church challenged the right of the church to enter the union. In each such action the church has prevailed and in each an identical plea of res judicata has been sustained. This court denied certiorari in the Ohio case. *Keith Wilson, et al.* v. *Washington Congregational Church,* 376 U.S. 912 (1964).*

The Michigan Supreme Court's Decision Is a Final Determination of an Issue Separable from the Merits of the Case and Reviewable by this Court Without Further Delay

The order of reversal in this action by the Supreme Court of Michigan is reviewable under 28 U.S.C. § 1257(3) as a final judgment or decree of the highest state court. By the decision below the Michigan Supreme Court has rejected petitioner's defense of res judicata, and no further review of that issue is possible in the state courts of Michigan. *Leland* v. *Ford,* 252 Mich. 547, 233 N.W. 410 (1930); *Myers* v. *Erwin,* 180 Mich. 469, 147 N.W. 458 (1914); *Monger* v. *New Era Assn.,* 171 Mich. 614, 137 N.W. 631 (1912); *People's Savings Bank* v. *Eberts,* 96 Mich. 396, 55 N.W. 996 (1893); *Hickox* v. *Railway Co.,* 94 Mich. 237, 53 N.W. 1105 (1892).

Although the order of the Michigan Supreme Court does not terminate this litigation, it is, nevertheless, a

* The Journal Entry dismissing the complaint in the Ohio case is printed in the Appendix (100a-104a).

final judgment or decree with respect to the issue of res judicata. A decision denying full faith and credit to the judgment of a sister state is final within the meaning of 28 U.S.C. § 1257 even though further proceedings remain in the trial court. *Johnson* v. *Muelberger*, 340 U.S. 581 (1950).

As this Court has held with respect to the reviewability of a similar question:

> "This is a separate and independent matter, anterior to the merits and not enmeshed in the factual and legal issues comprising the plaintiff's cause of action. Moreover, we believe that it serves the policy underlying the requirement of finality in 28 U.S.C. § 1257 to determine now in which state court appellants may be tried rather than to subject them, and appellee, to long and complex litigation which may all be for naught if consideration of the preliminary question of venue is postponed until the conclusion of the proceedings." *Mercantile Nat'l Bank* v. *Langdeau*, 371 U.S. 555, 558 (1963).

The present action is clearly one of those which

> ". . . finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. The Court has long given this provision of the statute this practical rather than a technical construction." *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546 (1949).

See also *Construction Laborers' Union* v. *Curry*, 371 U.S. 542, 548-552 (1963).

The Michigan decision in this case presents a threat of serious erosion of national policy and law embodied in the full faith and credit clause of the United States Constitution, Article IV, Section 1, and 28 U.S.C. § 1738. Such action by the Michigan court presents so serious a challenge to federal law and policy that it is one of a class

of cases in which this Court has repeatedly reviewed decisions that do not finally dispose of the litigation. *Mills* v. *Alabama*, 384 U.S. 214 (1966); *Mercantile Nat'l Bank* v. *Langdeau, supra; Construction Laborers' Union* v. *Curry, supra; Radio Station WOW* v. *Johnson*, 326 U.S. 120 (1945); Comment, 73 Yale L.J. 515 (1964).

A reversal of the Michigan decision at this time will be dispositive of the entire case, and all parties will be relieved of a long and burdensome trial. The *Cadman* case was on trial for twenty-three days and went through two appeals. The pretrial proceedings and the trial of the separate issue of res judicata in *Burlington* consumed twenty-one days. One of the United States District Judges in the *Burlington* case noted that the cost of the *Cadman* case was about "half a million dollars" (160 F. Supp. 651, 666). There is no indication that the trial of the present case would be any less lengthy. Furthermore, the decision sought to be reviewed is a breeder of litigation. If allowed to stand, it will surely prompt similar litigation in numerous other places.

To postpone a final determination of this matter until after a trial of the merits and further appeals would unnecessarily burden the courts. As this Court recently stated:

> "Such a roundabout process would not only be an inexcusable delay of the benefits Congress intended to grant by providing for appeal to this Court, but it would also result in a completely unnecessary waste of time and energy in judicial systems already troubled by delays due to congested dockets". *Mills* v. *Alabama, supra*, at pp. 217-218.

How Federal Question Presented In this Action

Petitioner's federal right to plead the New York State and federal court judgments in bar was specifically asserted in its motion to dismiss in the Wayne County Circuit Court (106a-109a). Of the *Cadman* judgment it was stated:

> "The subject matter of the present action is encompassed and comprehended by the subject matter of the New York action. Accordingly, on accepted principles of full faith and credit and judicial comity, the plaintiffs herein are precluded by the judgment in said action." (107a)

Of the *Burlington* judgment it was stated that the plaintiffs herein are precluded by the judgment in that case "on principles of full faith and credit and judicial comity" (108a).

In addition to the foregoing specification, it is apparent that Petitioner's right to plead the judgments of the New York court and of a United States court sitting in New York as conclusive of this Michigan action could exist only by reason of the full faith and credit provisions of Article IV, Section 1 of the United States Constitution.

Reasons For Granting the Writ

The Michigan Court's denial of full faith and credit to the New York judgment has thrown open for state-by-state determination whether the *Cadman* adjudication will be accorded full faith and credit or whether the departure issue will be retried. Such a laborious and wasteful legal process can be avoided only by this Court's application to the irreconcilable decisions of the highest courts of two states of a constitutional provision that is the very essence of federalism.

The central issue presented in the two cases is exactly the same, the only difference being that in the New York case it was presented in the broader frame of the whole Congregational denomination, while in the Michigan case it was presented in the narrower frame of a single congregation. The underlying question in each case, however, was the same:—whether the union of the two denominations impaired the autonomy of the local church. This is a question of law of national impact that must be determined

on the basis of full faith and credit to the determination first made.

It is not an ecclesiastical question—and the New York court properly so determined—because there is and has been no dispute as to the nature and fundamentals of Congregationalism, the essence of which is the autonomy of the local church. Whether the Basis of Union and constitution of the United Church accord with or depart from the agreed tenets of Congregationalism is a question of law that only a court can determine, as both the New York Court of Appeals and United States District Court for the Southern District of New York held. The New York court decided the question as the District Court and three other state courts have since held.

In any event, there can be no remaining question of whether the departure issue is an ecclesiastical question or of the jurisdiction of the New York court to determine it, because that jurisdictional question itself was raised and determined in the New York court and that determination is res judicata and commands full faith and credit.

The national impact and importance of the full faith and credit question and answer, and the essentiality of a single national answer to the underlying question of the validity of the union, are obvious from the fact that the denomination involved is a nation-wide denomination. The necessity of such a single and final answer has been recognized by the two determinations sought and made in class actions that covered every facet of the relationship of churches and members in the union and by the decisions of the courts of Ohio, Wisconsin and Wyoming that the determinations so made were binding on churches and members everywhere and must be given full faith and credit throughout the United States.

The Michigan Court has decreed otherwise, however, and if its decision is allowed to stand the question of

the relationship of churches and members and of the control of church property would have to be separately resolved in every state of the union, wrecking a denomination with the subversion of a constitutional fundamental.

The nature and great importance of the issue thus presented not only deserves but requires the ruling of this Court.

The Michigan Court Has Denied Full Faith and Credit to the New York Judgment

That the Michigan court has refused to credit the New York decision on the departure question is admitted. It is only necessary to note the assigned reasons for the refusal to see that they constitute no excuse and that the Michigan decision is therefore a denial of full faith and credit to the New York judgment.

The clear cut holding of the New York court is stated in the Michigan opinion—"that the Basis of Union is voluntary and in no way interferes with Congregational faith or manner of worship" (25a). The Michigan opinion refers to this New York holding, however, as "isolated expressions" and "idle phrases" that the New York court "curiously" "added" "for reasons of its own" (34a, 40a-41a), saying that there was "no necessity" for the New York court to get into such "ecclesiastical questions," (38a) and that there was "no jurisdiction" for it to do so because there were no property interests shown to confer jurisdiction to decide "this ecclesiastical question" (35a).

The Michigan court was totally without warrant in thus refusing to give full faith and credit to the New York decision.

It was not even open to the Michigan court to consider any question of the ecclesiastical nature of the departure issue or of the jurisdiction of the New York court to decide it for that question was necessarily determined by the New York decision.

It is apparent, however, that the Michigan court was in error in every one of the grounds on which it sought to justify its denial of credit to the New York decision: in regarding the departure issue as an ecclesiastical question; in stating that there was no necessity for the New York court's deciding the departure issue and treating the New York decision on the point as a dictum; and in holding that there was an absence of property rights involved in the New York court's determination of the departure issue that deprived it of jurisdiction to decide an ecclesiastical question.

The New York court's decision that the departure question was not an ecclesiastical question and was within its power to decide is entitled to full faith and credit

The *Cadman* case squarely presented to the New York courts the question whether the departure issue was ecclesiastical in nature and thereby outside their power to decide. The defendant General Council in its answer raised the jurisdictional question contending that the court had no power to decide the issues presented by the complaint (Mich. Apx. 192a, 204a).

In the New York Cout of Appeals the defendant's brief, under a major point heading, argued the jurisdictional insupportability of the trial court's decision of the departure issue contending that, as noted in the official report of the *Cadman* decision:

> "* * * under the First and Fourteenth Amendments to the United States Constitution and under Section 3 of Article I of the New York Constitution, the court was without jurisdiction over these religious and ecclesiastical matters and without lawful power to make the judgment". (306 N.Y. 151, 157)

The *Cadman* plaintiffs, on the other hand, stoutly maintained in behalf of the Congregational churches and mem-

bers that the court had jurisdiction to determine the departure issue (306 N. Y. 151, 154-156). The Court of Appeals necessarily considered this contention and held that "no ecclesiastical question is presented" (54a). Since its jurisdiction to decide the departure question was thus expressly determined by the New York Court of Appeals, that issue is not subject to reconsideration by the courts of another state. The Michigan Supreme Court was bound to give full faith and credit to the New York courts' determination of its power to decide the departure issue, as well as to its determination of the issue on the merits. *Durfee* v. *Duke*, 375 U.S. 106 (1963); *Milliken* v. *Meyer*, 311 U.S. 457 (1940); *Treines* v. *Sunshine Mining Co.*, 303 U.S. 66 (1939).

As this Court stated in *Milliken* v. *Meyer*, *supra* at p. 462:

> "In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based. *Fauntleroy* v. *Lum*, 210 U. S. 230; *Roche* v. *McDonald*, 275 U. S. 449; *Titus* v. *Wallick*, 306 U. S. 282. Whatever mistakes of law may underlie the judgment (*Cooper* v. *Reynolds*, 10 Wall. 308), it is 'conclusive as to all the *media concludendi*.' "

The departure issue is not an ecclesiastical question

Even if the departure issue were open to reconsideration in the Michigan court and even if rejection of the New York decision were allowable on a showing that the New York court had mistakenly rendered a decision on an ecclesiastical question, warrant for the Michigan decision would still be lacking for there is no showing in the Michigan opinion that the issue is an ecclesiastical question. Whereas the New York opinion explained why no ecclesiastical question was presented, the Michigan opinion has simply stated

the contrary in a conclusionary, unreasoned way. Patently New York was right and Michigan is wrong.

No ecclesiastical question was presented in *Cadman* because there was and is no question of the essence of Congregationalism—the autonomy of the local church in both its spiritual and temporal affairs. There was and is complete agreement on the fundamentals of Congregationalism. The only question on the departure issue was whether the Basis of Union was consistent with or departed from an undisputed standard.*

Such a comparison and determination is distinctly a judicial function and when the question is presented in a litigating forum it can only be determined by a court of law.

Notably, the Michigan court did not undertake to indicate wherein it thought any ecclesiastical question was involved in the issue. Its *ipse dixit* is unsupported, insupportable and clearly erroneous. It affords no basis at all for a refusal to give full faith and credit to the New York judgment.

The New York decision on the departure issue was not a dictum

The Michigan court has erroneously stated that all the New York court decided, aside from its determination that plaintiffs had no interests in the property of the Congregational bodies, was that the Congregational Churches could not be forced into the union; and that having reached that decision the argument was at an end and there was no need

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*Even the New York trial court, which differed from the Court of Appeals on the merits, had held that it was not deciding ecclesiastical questions (199 Misc. 124, 145). The Michigan Supreme Court was thus in error in stating that the *Cadman* trial court found "as an ecclesiastical matter" that the doctrine and polity of the United Church of Christ, as contained in the Basis of Union, reflected in part, at least, a departure from Congregationalism (31a).

to carry on to a decision regarding the impact of the union on those churches that might join (38a).

On the contrary, the *Cadman* case could not have been decided on so narrow a ground because the *Cadman* plaintiffs asserted that the General Council had no right to consummate the union on behalf of those churches desiring to join (52a).

The *Cadman* plaintiffs claimed that the proposed union, as embodied in the Basis of Union, would impair the autonomy of the local churches and thereby be alien to Congregationalism (Mich. Apx. 74a-75a), and that they were therefore entitled to a declaration that the General Council lacked the power and authority to carry out the Basis of Union at all (Mich. Apx. 84a).

The New York court was thus obliged to determine whether the Basis of Union affected the autonomy of the churches in the union and consequently whether the General Council had authority to effect a union that any Congregational church might join without a departure from Congregationalism. The impact of the union on the churches that did join was therefore an essential matter for adjudication.

The adjudication thus made—"that each member church will continue to possess the same freedom of faith and manner of worship as heretofore enjoyed—that there will be no interference in or abridgement of Congregational usage and practice" (54a)—was not something gratuitously "added" or "idle", but was the first, primary and basic ruling of the court.

The Michigan court's lack of excuse in denigrating the New York holding on the departure issue, saying that there was "no necessity" for it, is the more apparent in the light of the decision of the United States District Court in the *Burlington* case, stating that the following matters were "necessarily determined" by the New York Court of

Appeals in concluding that the declarations sought by plaintiff ought not to be made:

> "Under the Basis of Union no Congregational Christian Church, association, conference, or their members, would be subject in respect to either their spiritual or temporal affairs to any control by the proposed United Church of Christ. Freedom of worship and education at present enjoyed would be preserved in the United Church and not abridged. No individual church would be obligated to join the union except through its own voluntary action. Each member church would continue to possess the same freedom of faith and manner of worship as theretofore enjoyed. There would be no interference in or abridgement of Congregational usage and practice. Under these circumstances no ecclesiastical question was presented" (67a).

Property interests were involved in the departure issue presented to the New York court

Even if it could be said that the departure issue is an ecclesiastical question and that the New York judgment is entitled to full faith and credit only if the issue involved property interests, the judgment fully commands that credit, for property interests were involved in the consideration of the departure issue in *Cadman*.

The *Cadman* plaintiffs showed that they were represented in the membership of the General Council (49a), which had been established by the Congregational Christian churches and was made up of representatives of the churches and dedicated to fostering the interests of Congregational Christian churches (Mich. Apx. 72a, 83a). The plaintiffs asserted that the constitution of the General Council, by its established method of electing members to the General Council, placed its control in the Congregational Christian churches (Mich. Apx. 83a). One of the declarations sought by the *Cadman* plaintiffs, on the premise of its claimed showing that the Basis of Union was a

departure from Congregationalism, was that any Congregational Christian churches uniting with the United Church of Christ would "cease to be churches of that [Congregational] fellowship" or have "any connection" with the General Council (52a), and that any Congregational Christian churches which do not join the United Church will "remain the Congregational Christian Churches entitled to all the rights and privileges presently possessed and enjoyed by such churches" (Mich. Apx. 85a).

There was thus involved in the *Cadman* case property rights that were bound up in the question of "departure," separate and apart from the asserted interests of the plaintiffs in the funds of the various Congregational boards and agencies.

In sum, the *Cadman* plaintiffs were asserting on a national scale, in behalf of all Congregational Christian churches that might refuse to join the union, the same claim of a "faithful minority" as the plaintiffs in the Michigan case assert in behalf of the dissenters in the microcosm of a single church. The issue is the same, and the adjudication of that issue in a representative action like *Cadman* is *res judicata*. The Constitution compels that it be accorded full faith and credit.

This Court is the Sole Remaining Forum in Which the National Policy Embodied in the Full Faith and Credit Clause of the United States Constitution Can Be Enforced in This Case of Large National Importance

Where, as in this case, the issue and interested parties transcend state boundaries, the rule of rest embodied in the doctrine of *res judicata* would be meaningless in the absence of the requirements of Article IV, Section 1 of the United States Constitution and 28 U. S. C. § 1738.

Unless the ultimate authority of this Court is brought to bear in this case, there will be no foreseeable end to the

multiplicity of suits across the country involving the same issue but reaching no conclusive result. The litigation could only run a fifty-state course with consequences disastrous to the denomination.

There are approximately 5200 Congregational Christian churches with more than 1,200,000 members. There are churches in each of the fifty states. If the Michigan decision stands, a minority of the members in any of the 5200 churches may litigate the question whether the act of the church in becoming a part of the United Church of Christ violates Congregationalism.

It is appropriate for this Court to consider the effect of the Michigan decision in the perspective of history and of the future. The union of the Presbyterian Church and the Cumberland Presbyterian Church went before twelve state courts of last resort and involved twenty-seven cases (see Zollman, *American Church Law,* [1933] pp. 211-213). The union involved in this case may produce even more litigation if the error of the Michigan court is not corrected.

The courts of five states have already been involved in the "departure" question (105a). Even if actions are not brought in each of the forty-five remaining states, it is obvious that a heavy burden would be placed upon the state courts of this nation if the question can be relitigated again and again. Moreover, the cost to the United Church of Christ in defending its union so many times, and the distraction of its churches, members, resources and energies from the work of the Church to litigating warfare, would inevitably have a grave effect on the work of the church and upon its entire future. The goal of union is to strengthen the church. But the burden of litigating the validity of the union on a state-by-state basis could so diminish the strength of the uniting denominations as to do irreparable injury to both.

The Court may also appropriately take judicial notice of the ecumenical movement for union of the Protestant denominations in the United States. Nine major denominations are involved, of which two have the congregational form of organization. If any questions that might arise as to the validity of any resulting union may only be resolved by multiple law suits at the level of local churches and involving local church property, the legal aspects of union will overwhelm the movement and gravely prejudice the efforts toward unification of all Protestant denominations.

CONCLUSION

For all of the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted,

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